

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAVIER ANDRES USANDIVARAS, )  
Plaintiff, ) No. 18-880

GARY EGGLESTON, Everett West, Brian )  
Farman, Patrick Spak, Kyle Burbridge )  
JURY DEMAND

## Defendants.

## INTRODUCTION

20 On September 14, 2017, several Kirkland police officers pulled their weapons and  
21 pointed them at a cooperative, unarmed suspect, Javier Andres Usandivaras. The police  
22 planned to make a misdemeanor arrest based on events that had occurred earlier in the day,  
23 outside the presence of any officer, including defendant officers. Although Usandivaras was  
24 unarmed and cooperative, officers continued to point their guns at Usandivaras and used  
25 significant force when placing him in custody.

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## **JURISDICTION AND VENUE**

4       1.     This Court has original jurisdiction under 28 U.S.C. § 1331 (federal  
5 question jurisdiction) and 28 U.S.C. § 1337 (supplemental jurisdiction over state law  
6 claims).

7       2.     Venue is appropriate under 28 U.S.C. § 1331(b), because Defendants  
8 reside in this District and because all of the events and omissions giving rise to the  
9 claims occurred in this District. The Seattle Division is the proper forum because the  
10 events took place in King County, Washington.

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## **PARTIES**

13       3.     Plaintiff Javier Andres Usandivaras is a resident of King County,  
14 Washington.

15       4.     Defendant Gary Eggleston is an officer in the Kirkland Police Department.  
16 He is sued in his individual capacity.

17       5.     Defendant Everett West is an officer in the Kirkland Police Department.  
18 He is sued in his individual capacity.

19       6.     Defendant Brian Farman is an officer in the Kirkland Police Department.  
20 He is sued in his individual capacity.

21       7.     Defendant Patrick Spak is an officer in the Kirkland Police Department.  
22 He is sued in his individual capacity.

23       8.     Defendant Kyle Burbridge is an officer in the Kirkland Police Department.  
24 He is sued in his individual capacity.

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## FACTS

9. On September 14, 2017, Usandivaras got into an argument with a neighbor. The neighbor called the police, alleging that Usandivaras threatened him with a gun. That call happened no later than 3:45 pm.

10. After the argument with his neighbor, Usandivaras continued home.

11. Approximately 30 minutes later, several police cars went to Usandivaras' house.

12. At about this time—again, about 30 minutes after the alleged incident with the neighbor—Usandivaras called the police from his home.

13. After Usandivaras explained his version of the events with the neighbor over the phone, Officer Everett West wrote in his report that he asked Usandivaras to “leave his firearms inside and walk outside to the officers with his hands in the air and visible.”

14. West reported that Usandivaras was respectful and calm while speaking on the phone.

15. While West spoke with Usandivaras on the phone, Usandivaras' wife and children arrived home. They were not allowed to go into the house, and they viewed all the following events from the sidewalk.

16. The police reported that Usandivaras “exited his residence peacefully.”

17. As instructed by the police, Usandivaras exited his house with his arms raised.

18. When Usandivaras exited the house, he was confronted with three or four officers pointing guns at him.

19. Some of the officers were behind a ballistic shield.

20. Another officer was across the street, also with his gun drawn, also pointed at Usandivaras.

1       21. Although Usandivaras was not armed, was clam, and was cooperative, the  
2 officers continued to point their guns at Usandivaras.

3       22. Although Usandivaras is handicapped, and although Usandivaras was  
4 calm and cooperative, and although Usandivaras was not armed, and although  
5 Usandivaras informed the officers that he is handicapped, officers had him lay face  
6 down on the ground and then used their knees to place pressure on Usandivaras.

7       23. The method of arrest, face down on the concrete with officers on top of  
8 him, caused Usandivaras pain and discomfort.

9       24. Although Usandivaras was arrested, the defendant officers never told  
10 Usandivaras he was under arrest.

11       25. Despite this force, Usandivaras continued to cooperate with the police.  
12 After his arrest, he gave officers permission to search his car.

13       26. He gave the officers the combination to his gun safe, and officers seized  
14 the weapon he lawfully possessed.

15       27. Usandivaras was arrested for an alleged violation of RCW 9.41.270, a  
16 misdemeanor. RCW 9.41.270 prohibits the display of weapons “in a manner, under  
17 circumstances, and at a time and place that either manifests an intent to intimidate  
18 another or that warrants alarm for the safety of other persons.”

19       28. The alleged violation of RCW 9.41.270 was a misdemeanor.

20       29. Usandivaras has continually denied any wrongdoing in relation to his  
21 neighbor.

22       30. The incident with the neighbor was recorded by Usandivaras. After  
23 viewing this video of the incident, the prosecutor dropped all charges against  
24 Usandivaras.

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## **CAUSES OF ACTION**

**COUNT 1: 42 U.S.C. § 1983**

(Violation of the Fourth and Fourteenth Amendments)

31. Usandivaras did not pose a threat to the officers.

32. No use of force against Usandivaras was justified.

33. Defendants' pointing a gun at Usandivaras, and placing Usandivaras on the ground and handcuffing him with knees in his back, violated Usandivaras' right to be free of excessive force, unreasonable searches and seizures, and his due process right to be free of punishment without process. These actions were taken under color of law and without lawful justification.

34. As a result of the defendant officers' actions, Usandivaras endured physical pain and well as mental pain and suffering.

## **COUNT 2: State Law False Arrest**

35. A tort claim form was filed regarding the above events on March 30, 2018.

36. Defendants had no warrant to arrest Usandivaras.

37. No alleged crime occurred in the presence of the defendant officers.

38. The crime Usandivaras was alleged to have committed was a misdemeanor.

39. Given Usandivaras' cooperation and the time that had passed since the incident with the neighbor, there were no exigent circumstances.

40. Given the contradictory testimony given by witnesses and the video evidence Usandivaras offered to provide, no reasonable officer would believe that a crime had been committed.

1           41. In the alternative, given Washington law, any reasonable officer would  
2 have known a warrant was required to effect an arrest of a suspect at his home for a  
3 misdemeanor crime that was not committed in the officer's presence.

## **COUNT 3: Additional state law claims**

42. Defendants are liable to Usandivaras for intentional infliction of emotional distress.

43. Defendants are liable to Usandivaras for assault and battery.

44. Defendants are liable to Usandivaras for general negligence.

## **REQUEST FOR RELIEF**

45. Plaintiff seeks judgment against Defendants as follows:

- A. Damages in an amount to be determined by jury;
- B. Punitive damages in an amount to be determined by a jury;
- C. Costs of suit, including reasonable attorneys' fees, costs, and expenses as provided by law; and
- D. Such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

DATED June 18, 2018.

LAW OFFICE OF HARRY WILLIAMS LLC.

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